2. Pursuant to section 17(b), the SEC may exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Under section 6(c), the SEC may exempt classes of transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of each Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees on sales of securities and is therefore contrary not only to the policies of the Series but to the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Qualified Securities by a Rollover Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5582 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20937; 813–136]

EIP Inc.; Notice of Application

March 2, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: EIP Inc.

RELEVANT ACT SECTIONS: Applicant seeks a conditional order under sections 6(b) and 6(e) granting an exemption from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicant seeks to form limited partnerships (the ''Partnerships'') of which it will be the general partner and which will be employees' securities companies within the meaning of section 2(a)(13) of the Act, and to engage in certain affiliated and joint transactions with the Partnerships.

FILING DATES: The application was filed on September 1, 1994, and amended on November 1, 1994, January 13, 1995, and February 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. (''ML&Co.''). ML&Co. is a diversified financial services holding company that through its subsidiaries provides investment, financing, insurance, and related services. Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch''), ML&Co.'s principal sudsidiary, is a registered broker-dealer. ML&Co. and its affiliated companies are herein referred to as the ''ML Group.''

2. Applicant or another direct or indirect wholly-owned subsidiary of ML&Co. formed for such purpose will be the ''General Partner'' of each of the Partnerships.[1] The General Partner proposes to establish Partnerships from time to time for the benefit of highly compensated key employees of the ML Group. The Partnerships will be part of a program designed to create capital buildings opportunities competitive with those at other investment banking firms for ML&Co.'s professionals and managers and to facilitate its recruitment of professionals and managers. Each Partnership will operate as a non-diversified closed-end management investment company and will meet the definition of an

[1] The ''General Partner'' refers to applicant or another wholly-owned subsidiary of ML&Co. in its role as the general partner of a Partnership or the functional equivalent with respect to any Partnership organized as a business trust or limited liability company.

''employees' securities company'' in section 2(a)(13) of the Act.

3. Interests in the Partnerships (the ''Interests'') will be offered only to ''Eligible Employees,'' who are current employees of the ML Group that meet the income standards for ''accredited investors'' of rule 501(a)(6) under Regulation D promulgated under the Securities Act of 1933 (the ''Securities Act''). Eligible Employees will be experienced professionals in the investment banking and securities business, or in related administrative, financial, accounting, legal, or operational activities, and will be sophisticated investors. Eligible Employees will be senior employees of the ML Group and will know or be known to, and have direct access to, other Eligible Employees.[2] Eligible Employees will be advised that the Interests will be sold in a transaction exempt under section 4(2) of the Securities Act and thus offered without the protections afforded by registration thereunder, and that the Partnerships will be exempt from most provisions of the Act. An Eligible Employee becomes a limited partner of a Partnership (a ''Limited Partner'') by investing in the Partnership.

4. The applicable partnership agreement may provide that a Limited Partner make a capital contribution in its entirety upon the formation of a Partnership or in installments. A Limited Partner who fails to pay an installment when due must pay interest on such installment, remain personally liable for the amount of the default and, to the extent permitted by law, will not be entitled to participate as a Limited Partner when making approvals or decisions.

5. All of the Partnerships will have minimum capital contributions and restrictions with respect to transferability of Interests. Interests will be non-transferable except with the express consent of the General Partner and in any event will be transferable only to Eligible Employees and members of a Limited Partner's immediate family. Upon the death of a Limited Partner or such Limited Partner becoming incompetent, insolvent, incapacitated, or bankrupt, such Limited Partner's estate or legal representative may succeed to the Limited Partner's Interests as an assignee for the purpose of settling such Limited Partner's estate or administering such Limited Partner's property, but may not become a Limited Partner. Interests will not be redeemable, except that the estate of a deceased Limited Partner may elect to have the Limited Partner's Interests repurchased by the General Partner or the Partnership at a price equal to the value of the Interests determined at the next succeeding appraisal date.

6. The purchase price of an Interest acquired upon the termination of a Limited Partner's employment (other than termination for cause) or upon the Limited Partner's bankruptcy or adjudication of incompetence will equal the amount that the Limited Partner would have received had the Partnership been liquidated on the valuation date as of the end of the immediately preceding fiscal year. If termination is for cause, the General Partner has the right, but not the obligation, to acquire the Interest of the Limited Partner at the lesser of the amount equal to (a) what the Limited Partner would have received had the Partnership been liquidated on the valuation date as of the end of the immediately preceding fiscal year, less any distributions made after such valuation date, or (b) the cost of the Limited Partner's investment on such valuation date, plus any undistributed ordinary income.

7. The General Partner will be a registered investment adviser. The General Partner will manage, operate, and control the Partnerships and will have the authority to make all decisions regarding the acquisition, management, and disposition of the investments of the Partnerships (the ''Investments''). All Investments and dispositions thereof will be approved by the General Partner's board of directors (the ''Board''), which will consist of five members. When considering investments for the Partnerships, the Board will receive the advice of members of a committee of advisers. The Board may consider investments proposed by unrelated third parties and investments offered by Merrill Lynch in public offerings or private placements and investments presented to the Partnership by affiliates of the General Partner. All investments selected by the General Partner will be evaluated independently of each other and chosen only if a majority of the Board determines that they are suitable for and in the best interest of the Partnerships.

8. Pending investment, Partnership funds will be invested in ''Temporary Investments,'' which consists of: (a) U.S. Government obligations with maturities of not longer than one year and one day; (b) commercial paper with maturities not longer than six months and one day and having a rating assigned to it by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither organization shall rate such commercial paper at such time, by any nationally recognized rating organization in the United States) equal to one of the two highest ratings assigned by such organization; (c) interest-bearing deposits in U.S. or Canadian banks with an unrestricted surplus of at least $250 million, maturing within one year; and (d) any money market fund distributed and managed by ML&Co. or any affiliated person thereof or successor thereof. Consistent with section 12(d)(1)(A)(i), no Partnership making a Temporary Investment will acquire more than 3% of the total outstanding voting securities of an investment company.

9. The General Partner will make no cash contribution to the Partnerships other than a nominal contribution upon their formation. The General Partner will be allocated and receive 1% of the income, profit, loss, credit, expense, and deductions of the Partnership. Distributable cash generally will be allocated 1% to the General Partner and 99% to the Limited Partners. The General Partner is obligated to pay the operating expenses of the Partnerships and is entitled to receive from each Partnership annually up to 1½% of the Limited Partners' capital contribution to reimburse the General Partner for incurring such operating expenses. The General Partner's net worth will be adequate to meet the requirements of classifying the Partnerships as partnerships rather than as associations taxable as corporations for federal income tax purposes.

10. It is expected that new Partnerships would be formed on a periodic basis but would not be formed until the capital of the prior Partnership

[2] Pursuant to Merrill Lynch KECALP Growth Investments L.P. 1983, Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order), amended, Investment Company Act Release Nos. 20280 (May 5, 1994) (notice) and 20328 (June 1, 1994) (order), an indirect wholly-owned subsidiary of ML&Co. may establish limited partnerships (the ''KECALP Partnerships'') that meet the definition of ''employees' securities companies'' under the Act and are exempt from most provisions of the Act. Interests in the KECALP Partnerships are offered exclusively to certain employees of ML&Co. and its subsidiaries and to non-employee directors of ML&Co. It is expected that the number of persons eligible to invest in a Partnership will be significantly smaller than the number eligible to invest in a KECALP Partnership. All Eligible Employees are expected to be eligible to invest in KECALP Partnerships organized in the future. To avoid any conflicts of interests between the KECALP Partnerships and the Partnerships, ML&Co. had adopted a policy that, with respect to investment opportunities in which both a KECALP Partnership and a Partnership may invest, such opportunities will first be made available to the KECALP Partnership. In addition, no person may be a member of both the boards of directors of the General Partner and of KECALP Inc., the general partner of the KECALP Partnerships.

has been invested or committed for investment, other than reserves maintained for follow-on investments or operating expenses. The General Partner may under certain circumstances deem it appropriate to allocate an investment between two Partnerships.

11. It is expected that a substantial percentage of Investments will be made available to a Partnership by the ML Group. Other affiliated persons of ML&Co. may also invest in the same Investments in which the Partnerships invest.

12. The General Partner will not have the power to require that a Limited Partner withdraw from a Partnership, except that the applicable partnership agreement may provide that the General Partner has the right, but not the obligation, to acquire the Interest of a Limited Partner following his or her termination of employment or bankruptcy. The General Partner may be removed by the vote of at least two-thirds of the outstanding Interests of a Partnership. The General Partner may assign or transfer its Interest to another wholly-owned subsidiary of ML&Co.

13. The General Partner has the right to dissolve the Partnership approximately six years after its formation. It is anticipated that the General Partner will dissolve the Partnership when a Partnership's equity investments have matured and disposition of other Investments can be effected.

Applicant's Legal Analysis

1. Section 17(a) prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security or other property. Applicant requests an exemption from section 17(a) to the extent necessary to permit a member of the ML Group to engage in principal transactions with a Partnership. The exemption would let the Partnerships (a) purchase Investments from members of the ML Group on a principal basis; (b) purchase interests or property in a company or other investment vehicle affiliated with ML&Co. or in which a member of the ML Group already owns securities; (c) sell, put or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where that entity is affiliated with the ML Group; and (d) participate as a selling security holder in a public offering underwritten by a member of the ML Group or in which a member of the ML Group acts as a member of the underwriting or selling group. In addition, a Partnership may purchase from, or sell to, an affiliated person of such Partnership a Temporary Investment or other short-term investment. Applicant asserts that the requested exemption is consistent with the policy of the Partnerships and the protection of investors. The Limited Partners will be fully informed of the possible extent of the Partnerships' dealings with affiliates and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks.

2. Section 17(d) and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The section and rule might require the Partnerships to refrain from certain transactions in which any Limited Partner or a member of the ML Group is also a participant. Applicant requests an exemption from section 17(d) and rule 17d—1 to the extent necessary to let the Partnerships engage in transactions with ''Co-investors,'' as defined in condition 3 below, who may be affiliated persons of the Partnerships. Applicant believes that joint participation by the Partnerships in transactions with Co-Investors is consistent with the provisions, policies, and purpose of the Act. Each Limited Partner will receive a pro rata share of the income, profit, loss, credit, expense, and deduction of a Partnership based on the Limited Partner's investment in the Partnership, after the allocation to the General Partner of 1% of each such item. Any Investment made concurrently by a Partnership and a Co-Investor will be made on the same terms, though not necessarily in the same amount.

3. Section 17(f) requires that every registered investment management company deposit its securities and similar investments in the custody of certain specified entities. Rule 17f–1 requires that a member of a national securities exchange serving as custodian of the securities and investments of an investment company must, among other things, operate under a written contract approved by a majority of the investment company's board of directors. Applicant requests an exemption from section 17(f) and rule 17f–1 to let Merrill Lynch act as custodian without a written contract. Applicant asserts that, since there is such a close association between the Partnerships and Merrill Lynch, requiring a written contract would expose the Partnerships to unnecessary burden and expense where none is necessary. Furthermore, any funds or securities of the Partnership held by Merrill Lynch will have the protection of fidelity bonds. Applicant further requests an exemption from rule 17f–1(b)(4), which requires that the investment company's securities and investments be verified by actual examination by an independent public accountant at certain specified times. Applicant does not believe the expense of retaining such an independent accountant is warranted, in light of the community of interest of all parties involved and the existing requirement for an independent annual audit. The Partnerships otherwise will comply with rule 17f–1.

4. Section 17(g) authorizes the SEC to require by rules thereunder that certain officers and employees of a registered management investment company be bonded against larceny and embezzlement. Rule 17g–1 requires, among other things, that a majority of the company's board of directors approve at least annually the arrangements regarding the custody and safekeeping of the company's assets. Applicant requests an exemption from section 17(g) and rule 17g–1 to let the Partnerships comply with rule 17g–1 by having the General Partner's officers and directors take actions and make determinations set forth in the rule. In all other respects, the partnerships will comply with rule 17g–1.

5. Rule 17j–1 requires that every access person of a registered investment company report to such company with respect to transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in the security. Applicant requests an exemption from the rule, except for the antifraud provisions set forth in rule 17j–1(a). Applicant asserts that the other provisions of the rule are burdensome and unnecessary as applied to the Partnerships and that the exemption is consistent with the policy of the Act. Applicant contends that the community of interests among the Limited Partners by virtue of their common association in ML&Co. is the best insurance against any abuse at which the rule is aimed.

6. Section 6(c) permits the SEC to exempt any person, security, or transaction from any of the provisions of the Act, or of the rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the requested exemption satisfies these standards.

7. The Partnerships will be conceived and organized by persons who will be investing in the Partnerships, either directly or indirectly, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant asserts that the requested exemptions are necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs of the Eligible Employees.

Applicant's Conditions

Applicant agrees that the requested order shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners and do not involve overreaching of the Partnership or its partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners, the Partnership's organizational documents, and the Partnership's reports to its partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated persons of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d–1, the General partner will not invest the funds of any Partnership in any Investment in which a ''Co-Investor,'' as defined below, has or proposed to acquire the same class of securities of the same issuer, where the Investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' means ML&Co. and any person who is: (a) An ''affiliated person'' (as such term is defined in the Act) of the Partnership; (b) a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (c) an officer or director of a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (d) companies, partnerships, or other investment vehicles offered, sponsored, or managed by a member of the ML Group; (e) any entity with respect to which ML&Co. or its subsidiaries or controlled entities provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including, without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (f) a company in which an officer or director of the General Partner acts as officer, director, or General Partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–2(T) thereunder.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send to each Limited Partner who had an interest in the Partnership at any time during the fiscal year then ended partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the General Partner and deemed qualified by the General Partner to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets, and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the General Partner may revise the appraisal as it, in its good faith and sole discretion, deems appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such a year.

6. In any case where purchases or sales are made from or to an entity affiliated with a partnership by reason of a 5% or more investment in such entity by a director, officer, or employee of ML&Co. or any of its affiliates, any

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[4] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5645 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20934; International Series Release No. 789; 812–9262]

Mellon Bank, N.A.; Notice of Application

March 1, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Mellon Bank, N.A. (''MBNA'').

RELEVANT ACT SECTIONS: Sections 6(c) and 17(f).

SUMMARY OF APPLICATION: MBNA seeks an order under section 6(c) of the Act granting an exemption from section 17(f). The order would allow United States registered investment companies other than investment companies registered under section 7(d) (a ''U.S. Investment Company''), for which MBNA serves as custodian or subcustodian, to maintain foreign securities and assets in the United Kingdom with Mellon Europe Limited (''MEL''), a wholly-owned subsidiary of MBNA.

FILING DATES: The application was filed on September 29, 1994 and amended on February 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, Pennsylvania 15258-0001.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Mranagement, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. MBNA requests an order to allow MBNA, any U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, ''assets'') in the custody of MEL. For the purposes of this application, ''foreign securities'' includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof of by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. MBNA is a national banking association organized and existing under the laws of the United States. MBNA is regulated by the Office of the Comptroller of the Currency and is subject to the National Bank Act. As of December 31, 1993, MBNA had aggregate capital, surplus, and undivided profits in excess of $2,460,000,000. MBNA is a wholly-owned direct subsidiary of Mellon Bank Corporation (''Mellon''), a Pennsylvania corporation qualified as a bank holding company under the Bank Holding Company Act of 1956.

3. MEL is a wholly-owned subsidiary of MBNA and is regulated by the Bank of England under the Banking Act of 1987. As of December 31, 1993, MEL had shareholders' equity slightly in excess of $10,000,000.

4. Boston Safe Deposit and Trust Company (''Boston Safe'') is a subsidiary of The Boston Company, Inc. Boston Safe is organized as a trust company under Massachusetts law and is regulated by the Massachusetts Commissioner of Banks. In May 1993, Mellon acquired The Boston Company, Inc. and its subsidiaries, including Boston Safe. A major business unit of Boston Safe is Global Securities Services, which provides international financial and securities processing services, including global custody, and is qualified to hold U.S. Investment Company assets under section 17(f) of the Act.

5. Mellon proposes to transfer the custody activities of the London branch of Boston Safe to MEL by transferring to MEL the operations and assets of the Global Custody Department of Boston Safe. Assets of U.S. Investment Companies held by the London branch of Boston Safe will not be transferred to MEL prior to the issuance of the requested order.[1] Thereafter, MBNA, as custodian or sub-custodian for a U.S. Investment Company, will deposit, or cause or permit a U.S. Investment Company to deposit, its assets with MEL. In the alternative, MEL, as custodian or subcustodian will receive and hold the assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian, other than MBNA but including Boston Safe.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank'', as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States which section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f-5 expands

[1] Until the requested order is issued, U.S. Investment Company assets will continue to be held by the London branch of Boston Safe or another custodian that qualifies under section 17(f) of the Act.